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2 UNITED STATES DISTRICT COURT FOR THE
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 METROPOLITAN PROPERTY AND)
6 CASUALTY INSURANCE COMPANY,)
A Rhode Island Corporation,)

7 *Plaintiff,*)

8 vs.)

9 DAVID H. HERRERA and BECKY L.)
10 HERRERA, husband and wife, and the)
marital community thereof,)

11 *Defendants,*)

12 and)

13 BRIAN ONUTZ and AMY ONUTZ, a)
14 married couple,)

15 *Intervenors.*)
16

CASE NO. 2:19-cv-00250-BJR

ORDER GRANTING DEFENDANTS'
MOTION FOR ATTORNEY FEES AND
COSTS

17 **I. INTRODUCTION**

18 Before the Court is Defendants David Herrera and Becky Herrera's ("Defendants") Motion
19 for Attorney Fees and Costs under *Olympic S.S. Co. v. Centennial Ins. Co.*, 811 P.2d 673 (Wash.
20 1991). Dkt. No. 44. Previously, the Court granted Defendants' Cross Motion for Summary
21 Judgment and held that Plaintiff Metropolitan Property and Casualty Insurance Company
22 ("MetLife") was required to cover the bicycle accident between Defendant David Herrera and
23 Intervenor Brian Onutz under the Defendants' Homeowner's and Landlord's Dwelling policies.
24
25 Dkt. No. 39.

1 MetLife, for its part, does not contest the applicability of *Olympic Steamship* fees, but
2 instead objects to individual expenditures claimed by Defendants in their motion. Having
3 reviewed the motion, the opposition thereto, the record of the case, and the relevant legal
4 authorities, the Court will grant Defendants' motion as elaborated in this order. The reasoning for
5 the Court's decision follows

6 II. BACKGROUND

7 The underlying facts of this matter were elaborated in the Court's Order on Motions for
8 Summary Judgment. *See* Dkt. No. 39 at 2–4. In brief, Defendant David Herrera and Intervenor
9 Brian Onutz were involved in a bicycle accident on the Burke-Gilman Trail in Seattle while
10 Defendant was riding an electronic bicycle. *Id.* at 2. MetLife filed for declaratory relief to
11 determine whether Defendants' insurance policies covered the accident, or whether Defendant
12 David Herrera's electronic bicycle fell within a coverage exception for "motorized land
13 vehicle[s]." *See* Dkt. No. 1 (Complaint). Defendants answered and brought four counterclaims.
14 *See* Dkt. No. 8. Then, all three parties moved for summary judgement. Dkt. Nos. 12 (MetLife),
15 25 (Defendants), 29 (Intervenors).

16 On November 14, 2019, the Court granted summary judgment in favor of Defendants and
17 Intervenor who both sought coverage for the accident. Dkt. No. 39. The Court held that the
18 insurance policies were ambiguous as to whether electronic bicycles qualified as "motorized land
19 vehicle[s]" and that in the event of ambiguity the Court should err on the side of coverage. *See*
20 Dkt. No. 39 at 5–11. Plaintiffs subsequently moved for, and the court granted, dismissal of their
21 counterclaims, Dkt. Nos. 41 (Motion), 42 (Order).
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1 Defendants then moved for attorney's fees and costs under the *Olympic Steamship* Doctrine
2 and provided an invoice. See Dkt. No. 44 at 8–9. In total, they sought \$72,886.69. MetLife, in
3 its response, did not dispute the applicability of the *Olympic Steamship* Doctrine but drew issue
4 with several of the invoiced expenses including (1) time spent for “unsuccessful counterclaim[s]”;
5 (2) “mistaken/unrelated charges”; and (3) “charges not pertaining to the establishment of
6 coverage.” Dkt. No. 46 at 1–2. Consequently, MetLife seeks a reduction in Defendants’ fees of
7 \$6,920.80. Defendants, in reply, defend the dispute charges and (4) now seek an additional \$2,000
8 for time spent composing their reply less \$377.70 is mislabeled time. Dkt. No. 47 at 2. As such,
9 they now seek \$74,508.99.

11 III. DISCUSSION

12 A. *Olympic Steamship*

13 Under *Olympic Steamship*, “an award of fees is required in any legal action where the
14 insurer compels the insured to assume the burden of legal action, to obtain the full benefit of his
15 insurance contract, regardless of whether the insurer’s duty to defend is at issue.” *Olympic*
16 *Steamship*, 811 P.2d at 681. This rule applies “where the insurer forces the insured to litigate
17 questions of coverage.” *Stone v. Gov’t Employees Ins. Co.*, No. 16-civ-5383, 2017 WL 3424941,
18 at *2 (W.D. Wash. Aug. 8, 2017) (quoting *McGreevy v. Oregon Mut. Ins. Co.*, 1904 P.2d 731, 735
19 n. 4 (1995)). *Olympic Steamship* “has been read broadly by Washington courts” and “[t]he only
20 articulated limitation . . . is that no fees are awarded when the insurer does not dispute coverage,
21 but merely disputes the value of the claim.” *Nordstrom, Inc. v. Chubb & Son, Inc.*, 54 F.3d 1424,
22 1437 (9th Cir. 1995) (citing *Dayton v. Farmers Ins. Group*, 876 P.2d 896, 898 (Wash. 1994). Here,
23 MetLife does not dispute *Olympic Steamship*’s applicability. See generally Dkt. No. 46.
24
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1 Courts generally calculate *Olympic Steamship* fees using the lodestar method. *See Dennis*
2 *v. Liberty Mut. Grp.*, No. 13-civ-989, 2014 WL 11997864, at *2 (W.D. Wash. June 19, 2014).
3 This method entails “multiplying a reasonable hourly rate by the number of hours reasonably
4 expended on the matter.” *Scott Fetzer Co. v. Weeks*, 859 P.2d 1210, 1215–16 (Wash. 1993). This
5 Court has described the methodology as a four step process, including: (1) looking to the number
6 of hours expended; (2) determining whether the hourly rate charged was reasonable; (3)
7 multiplying hours by rate; and (4) determining whether the court ““needs adjustment either upward
8 or downward to reflect factors not already taken into consideration.”” *See Dennis*, 2014 WL
9 11997864, at *2 (quoting *Bowers v. Transamerica Title Ins. Co.*, 675 P.2d 193, 201–02 (Wash.
10 1983)). Further, “[i]n reviewing the reasonableness of the attorney’s fees the court ‘should
11 discount hours spent on unsuccessful claims, duplicated or wasted effort, or otherwise
12 unproductive time.’” *Id.* (quoting *Chuong Van Pham v. City of Seattle, Seattle City Light*, 151
13 P.3d 976, 981 (Wash. 2007)).
14

15 As to steps (2) and (4), MetLife does not contest the applicable attorney rates nor claims
16 upward or downward departure factors. *See generally* Dkt. No. 46. Thus, the only issue before
17 the Court is the reasonableness of Defendants’ claimed fees and MetLife’s objections thereto.
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19 **B. Counterclaims**

20 First, MetLife objects to the billing entries for Defendants’ voluntarily dismissed
21 counterclaims. *See* Dkt. No. 46 at 2–3. MetLife does not provide a robust description of its
22 objection to these charges. The Court assumes then that MetLife objects because it considers the
23 counterclaims “unsuccessful,” “duplicative,” or “otherwise unproductive.” *Dennis*, 2014 WL
24 11997864, at *2; *Scott Fetzer*, 859 P.2d at 1216 (quoting *Bowers*, 675 P.2d at 203). Defendants
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1 respond that their counterclaims were neither unnecessary nor unreasonable because they
2 constituted compulsory counterclaims under FRCP 13(a) and sufficiently related to the question
3 of coverage. *See* Dkt. No. 47 at 2–3.

4 Reviewing the counterclaims, the Court determines that they were neither unnecessary nor
5 unreasonable. The counterclaims included Breach of Insurance Contract, Bad Faith, Breach of
6 Consumer Protection Act, and Coverage by Estoppel. Dkt. No. 8 at 12–17. These claims are
7 sufficiently related to the question of coverage that principles of judicial economy made it prudent
8 to assert them as related counterclaims. Further, since Defendants voluntarily withdrew the
9 counterclaims after coverage was established, no unreasonable expenses were accumulated beyond
10 the efforts necessary to file for their withdrawal.

12 For this same reason, this Court distinguishes the decision not to award “extra-contractual
13 claims” in *Dennis*, 2014 WL 11997864, at * 3. That Court held the plaintiff could not recover
14 *Olympic Steamship* fees for counterclaims for “time spent working on claims asserting a breach of
15 duty of good faith and in collecting and analyzing medical and wage records.” *Id.* That Court
16 reasoned that those claims addressed “the value of the claim rather than the issue of coverage.” *Id.*
17 As that Court noted, “[t]his Court . . . resolved the issues related to claim coverage while declining
18 to address issues related to these extra-contractual claims regarding bad faith.” *Id.*

20 Here, however, Defendants presented their counterclaims along side their answer and
21 review of the counterclaims shows they are related to litigating the question of MetLife’s coverage.
22 Defendants’ Breach of Contract claim, for example, was based on the allegation that MetLife failed
23 to properly investigate the accident and settle with Intervenor based on MetLife’s contesting
24 coverage. Dkt. No. 8 at 9–10. Similarly, Defendants’ claim for Bad Faith alleged malfeasance on
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1 MetLife's part in providing "misleading and incomplete communications regarding their insurance
2 coverage." *Id.* at 13. Their claims for Breach of Consumer Protection Act and Coverage by
3 Estoppel are much in the same vein. *Id.* at 16–17. Thus, the charges surrounding Defendants'
4 counterclaims were sufficiently related to their coverage dispute and not unnecessary or
5 unreasonable.

6 **C. Mistaken Charges**

7 MetLife contests \$337.70 of charges whose billing entries address a "mediation brief."
8 Dkt. No. 46 at 4. As the parties never mediated, MetLife asserts that the mediation charges "appear
9 to be in error." *Id.* They are in fact correct. Defendants reply that the references to a mediation
10 brief are erroneous and were meant to refer to the summary judgment briefing. *See* Dkt. No. 47 at
11 4. To avoid controversy, however, Defendants' attorneys have given Defendants an invoice credit
12 for the time and reduced their total sought *Olympic Steamship* fees by \$337.70.

14 **D. Not Pertaining to Establishing Coverage**

15 Finally, MetLife objects to \$840.75 worth of time in which Defendants' counsel
16 coordinated with the MetLife-appointed defense for the underlying litigation against Intervenor
17 over liability for the accident. Dkt. No. 46 at 4–5. The Court determines that it was reasonable
18 for counsel to have conferred about the underlying liability case.

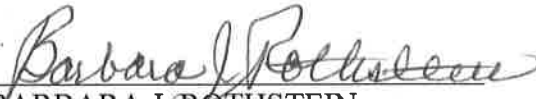
20 **E. Reply Expenses**

21 Defendants seek an additional \$2,000 expended to compose their reply. The Court finds it
22 reasonable for Defendants to have taken the time to compose a reply in defense of their sought
23 after fees.

IV. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendants' Motion for Attorney Fees and Costs for \$74,508.99.

DATED this 21st day of February, 2019.


BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE